

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

THICCC BOY PRODUCTIONS INC.

Plaintiff,

v.

KYLE SWINDELLES a/k/a YEW NEEK
NESS; and DOES 1 through 10,

Defendants.

Case No. 1:22-cv-00090-MSM-PAS

**PLAINTIFF THICCC BOY
PRODUCTIONS INC.’S STATEMENT OF
UNDISPUTED FACTS IN SUPPORT OF
ITS OPPOSITION TO DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to LR Cv 56(a)(4), Plaintiff respectfully submits the following statement of undisputed facts:

UNDISPUTED FACTS

18. Each of the copyrighted works at issue is a creative expression. [*See* Declaration of Thomas P. Burke Jr. in support of Plaintiff Thicc Boy Productions Inc.’s Motion for Partial Summary Judgment (ECF 21-2) (“Burke Decl.”), ¶¶ 2-7 (establishing that Mr. Swindelles did not timely respond to requests for admissions); Burke Decl., Ex. 1 at p.6, Request No. 15.]

19. At the time that Swindelles uploaded the infringing materials to his YouTube account, each of the works was unpublished. [Burke Decl., Ex. 1 at p.5, Request No. 9.]

20. Swindelles monetized the infringing materials on his YouTube account. [Burke Decl., Ex. 1 at p.5, Request No. 13.]

21. The infringing materials do not add something new to the embodied works. [Burke Decl., Ex. 1 at p.6, Request No. 14.]

22. The infringing materials do not provide a further purpose or different character to the embodied works. [Burke Decl., Ex. 1 at p.6, Request No. 14.]

23. The infringing materials do not alter the works with a new expression, meaning, or message. [Burke Decl., Ex. 1 at p.6, Request No. 14.]

24. The infringing materials take more than is necessary for Swindelles's purposes in using each of the works. [Burke Decl., Ex. 1 at p.6, Request No. 16.]

25. The infringing materials harm the market for each of the works by serving as a market replacement for them. [Burke Decl., Ex. 1 at p.6, Request No. 17.]

DATED: November 9, 2022

/s/ Robert E. Allen
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